

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

Chapter 11

DELAFIELD 246 CORP.,

Case No. 05-13634 (ALG)

Debtor.

DELAFIELD 246 CORP.,

Plaintiff,

Adv. Proc. No.
05-01834 (ALG)

-against-

THE CITY OF NEW YORK; DELAFIELD ESTATES
HOMEOWNERS ASSOCIATION, INC.; MARTIN
RAPOPORT; RIVKA RAPOPORT; MARK LIDAGOSTER;
LYDIA LIDAGOSTER, ARNOLD STARK; JOAN STARK;
MICHAEL RUBIN; ANNETTE RUBIN; HAROLD ENTEN;
BARBARA STRASSBERG; ALEX MULLEN; ELENA
STAROSTA-MULLEN; ERIK MINTZ; RANDI CARREY;
BRUCE SOLOWAY; SELENE SOLOWAY; BENJAMIN B.
SCHERMIN; SHELLY SCHERMIN; F. BROWER MOFFITT;
JAYNE S. MOFFITT; DEBRA MACFARLANE; MARK SOLTZ;
CAROL SOLTZ; KENNETH FREEDMAN; and
GLORIA FREEDMAN,

Defendants.

DESIGNATION OF RECORD AND STATEMENT OF ISSUES ON APPEAL

Pursuant to Bankruptcy Rule 8006, appellant, Delafield 246 Corp., by its
attorneys, Steven Cohn, P.C.:

1. Designates the items to be included in the record on appeal as those set forth on Schedule A attached.
2. States the issues to be presented on the appeal as those set forth on Schedule B attached.

SCHEDULE A

ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

1. Notice of Motion of City of New York (the “City”), dated February 24, 2006
2. Declaration of Lonica L. Smith dated February 24, 2006 in support of City’s Motion and the exhibits attached thereto
3. Memorandum of Law dated February 24, 2006, submitted by the City in support of motion
4. Plaintiff’s Notice of Cross motion for partial summary judgment, etc., dated April 7, 2006
5. Affirmation of Daniel A. Zimmerman, dated April 7, 2006 in support of cross motion and in opposition to City Motion and exhibits attached thereto
6. Plaintiff’s Memorandum of Law dated April 7, 2006
7. City’s Notice of Cross Motion dated June 18, 2006
8. Declaration of Lonica L. Smith dated June 18, 2006 and exhibits attached thereto
9. City’s Memorandum of Law dated June 18, 2006
10. City’s Statement Pursuant to Local Rule 7056-1(b) dated June 18, 2006
11. Plaintiff’s Amended Second Notice of Cross Motion for Partial summary Judgment dated August 3, 2006

12. Affirmation of Daniel A. Zimmerman, dated August 2, 2006 and exhibits attached thereto
13. Affidavit of Lance K. Levenstein dated July 27, 2006
14. Affidavit of Abraham Zion dated August 1, 2006
15. Affidavit of Mark Zion dated July 27, 2006 "Respecting Visits to City Offices"
16. Affidavit of Mark Zion dated August 1, 2006 "Respecting City's Overstatement of Interest" and the exhibits attached thereto
17. Affidavit of Mark Zion dated July 27, 2006 "Respecting the City's 1999 Clerical Apportionment Error" and the exhibits attached thereto
18. Plaintiff's Reply Memorandum of Law, dated August 2, 2006
19. Plaintiff's Statements pursuant to Local Rule 7056-1 dated August 2, 2006
20. Declaration of Lawrence J. Brenner dated October 13, 2006 and the exhibits attached thereto
21. Affidavit of Mia Parks dated October 12, 2006 and exhibits attached thereto
22. City Memorandum of Law dated October 13, 2006
23. City's response under Local rule 7056-1 dated October 13, 2006
24. Sur-Reply affirmation of Daniel A Zimmerman dated November 17, 2006 and the exhibits attached thereto

25. Affidavit of Mark Zion dated November 14, 2006 “Respecting City’s Overstatement of Claim as per City’s Statements of Account” and exhibits attached thereto
26. Plaintiff’s Sur-Reply Memorandum of Law
27. Transcript of oral argument on November 30, 2006
28. City’s letter of January 5, 2007
29. Court’s Memorandum of Opinion dated April 25, 2007
30. Order Dismissing the Complaint as Against Defendant City of New York, dated and entered on May 24, 2007
31. Notice of Appeal, dated June 1, 2007

SCHEDULE B

ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in concluding that the amount of the City's tax lien claims on the Debtor's real property had been previously adjudicated by a tribunal of competent jurisdiction so as to preclude the Bankruptcy Court's exercise of subject matter jurisdiction pursuant to 11 U.S.C. § 505(a)(2)(A)?
2. Whether the Bankruptcy Court erred in concluding that the legality of the City's tax lien claims on the Debtor's real property had been previously adjudicated by a tribunal of competent jurisdiction so as to preclude the Bankruptcy Court's exercise of subject matter jurisdiction pursuant to 11 U.S.C. § 505(a)(2)(A)?
3. Whether the Bankruptcy Court abused its discretion by concluding that it would abstain from entertaining the Debtor's challenges to the City's tax lien claims against the Debtor's real property if the Bankruptcy Court had subject matter jurisdiction to determine them?

AFFIDAVIT OF MAILING

STATE OF NEW YORK }
 } ss.:
COUNTY OF NASSAU }

KELLY GERAKIOS, being duly sworn, deposes and says:

That she is over the age of 18 years, that she is not a party to this action and has this day, to wit: the day on which this Affidavit was sworn to, served upon the party below indicated the paper (s) thereafter set forth by depositing a true copy thereof, in a sealed wrapper, with postage prepaid thereon in an official depository of the United States Postal Service, within the State of New York, addressed to each of the following persons at the last known address set forth after each name:

RE: Delafield 246 Corp., v. Delafield 246 Corp.,

Document Served: **DESIGNATION OF RECORD AND STATEMENT OF ISSUES ON APPEAL**

Served upon:

TO: **CITY OF NEW YORK, LAW DEPARTMENT**

Attn: Lawrence J. Brenner, Esq.
100 Church Street
New York, New York 10007-2601

OFFICE OF UNITED STATES TRUSTEE

Attn: Richard Morrissey, Esq.
33 Whitehall Street
New York, New York 10004

ROBINSON, BROG LEINWAND GREENE GENOVESE

Attn: Christine H. Black, Esq.
1345 Avenue of the Americas
31st Floor
New York, New York 10105

OCHS & GOLDBERG

60 East 42nd Street
New York, NY 10165
Attn: Martin P. Ochs, Esq.


KELLY GERAKIOS

Sworn to before me this
18th day of June 2007


NOTARY PUBLIC - STATE OF NEW YORK

JENNIFER CHESTER
Notary Public, State of New York
No. 01CH6128548
Qualified in Nassau County
Commission Expires June 13, 2009